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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

ISABEL RODRIGUEZ and DANIEL TOVAR,
on behalf of themselves all employees similarly
situated,

Plaintiffs,

v.

ROY MILLER PAINTING, INC., a California
Corporation; and DOES 1 through 50, inclusive,
Defendants.

Case No.: 30-2023-01314830-CU-OE-CXC

[Assigned for all purposes to Hon. Melissa R.
McCormick, Dept. CX104]

**CLASS AND PAGA REPRESENTATIVE
ACTION**

**PLAINTIFFS' NOTICE OF COURT'S
RULING ON MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT**

Action Filed: March 20, 2023
Trial: Not Set

1 **PLEASE TAKE NOTICE** that on February 20, 2025, Department CX104 of the above-
2 captioned Court issued a ruling on final approval of this class and PAGA representative action
3 settlement and continued the hearing for final approval of class and PAGA representative action
4 settlement to **April 24, 2024 at 2:00 p.m.** in the same department to permit the parties to address
5 and respond to the issues identified in the Court’s ruling. The Court’s tentative ruling issued on
6 February 20, 2025, which became final on February 20, 2025, is attached hereto as **Exhibit A.**

Exhibit “A”

**LAW & MOTION CALENDAR
TENTATIVE RULINGS**

February 20, 2025

**Judge Melissa R. McCormick
Dept. CX104**

Department CX104 hears law and motion on Thursdays at 2:00 p.m.

Court reporters: Official court reporters typically are not provided in this department for any proceedings. If the parties desire the services of a court reporter, the parties should follow the procedures set forth on the court's website at www.occourts.org.

Tentative rulings: The court endeavors to post tentative rulings on the court's website by 9:00 a.m. the day of the hearing. Tentative rulings may not be posted in every case. Please do not call the department for tentative rulings if tentative rulings have not been posted.

Submitting on tentative rulings: If all parties intend to submit on the tentative ruling and do not desire oral argument, please advise the courtroom clerk or courtroom attendant by calling (657) 622-5304. Please do not call the department unless all parties submit on the tentative ruling. If all parties submit on the tentative ruling and so advise the court, the tentative ruling will become the court's final ruling and the prevailing party shall give notice of the ruling.

Appearances and public access: Appearances, whether in person or remote, must comply with Civil Procedure Code section 367.75, California Rule of Court 3.672, Orange County Superior Court Local Rule 375, and Orange County Superior Court Appearance Procedure and Information—Civil Unlimited and Complex (pub. 9/9/22).

Unless the court orders otherwise, remote appearances will be conducted via Zoom. All counsel and self-represented parties appearing via Zoom must check in through the court's civil remote appearance website before the hearing begins. Check-in instructions are available on the court's website.

The public may attend hearings by coming to court or via remote access as described above.

Photographing, filming, recording and/or broadcasting court proceedings are prohibited unless authorized pursuant to California Rule of Court 1.150 or Orange County Superior Court Local Rule 180.

Non-appearances: If nobody appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The court also might make a different order. See *Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442 n.1.

2	Rodriguez, et al. v. Roy Miller Painting, Inc. 2023-01314830	<u>Plaintiffs' Motion for Final Approval of Class and PAGA Settlement</u> The court has reviewed and considered the papers filed in support of plaintiffs' motion for final approval of a \$181,000 class action and PAGA settlement. The court has the following questions and comments: 1. Was the September 23, 2024 Order Granting Preliminary Approval (ROA 72) served on the LWDA? Plaintiffs must submit a proof of service reflecting service of that document on the LWDA and stating when and how service was effected. 2. Has the deadline to object, opt-out or dispute for the 14 remained notices elapsed? If so, were any objections, exclusions or disputes received for those remained notices? 3. What is the total consideration each plaintiff anticipates receiving (not including any enhancement payment and including any individual claims)? 4. Plaintiffs seek \$19,328.96 in litigation costs, including reimbursement for \$18.48 in mailing costs, which are not recoverable pursuant to Civil Procedure Code section 1033.5(b)(3). In addition, plaintiffs must submit invoices substantiating the request for reimbursement of a \$12,950 mediation fee and a \$4,200 "economic damages expert fee." 5. As to the proposed order and judgment (ROA 73): a. The proposed order and judgment should be revised consistent with the above. b. Paragraph 16 of the proposed order and judgment is inconsistent with paragraphs 34 and 35 of the First Amended Settlement Agreement (9/23/24 Order (ROA 72) Ex. 2), i.e., when the class and PAGA releases become effective. The proposed order and judgment should be revised accordingly. c. The parties should propose a date for the final accounting hearing. Should the motion for final approval be granted, the court will hold a final

		accounting hearing on a Thursday at 9:00 a.m. The final accounting hearing should occur after the deadline for class members to cash their checks. Plaintiffs shall submit a final accounting report at least 9 court days before the final accounting hearing regarding the status of the settlement administration. The final report must include all information necessary for the court to determine the total amount actually paid to class members and any amounts tendered to the State Controller's Office under the unclaimed property law. The hearing on plaintiffs' motion for final approval is continued to <u>April 24, 2025 at 2:00 p.m.</u> in Department CX104 to enable the parties to address and respond to the above issues. See <i>also</i> Department CX104 Guidelines for Approval of Class Action Settlements and PAGA Settlements (www.occourts.org). A supplemental brief shall be filed at least 9 court days before the hearing and shall address as necessary each of the above points. The parties shall provide redlined copies of any revised documents (e.g., revised settlement agreement, revised notice, revised proposed order). Plaintiffs are ordered to give notice, including to the LWDA, and to file a proof of service. Plaintiffs must also serve the LWDA with any supplemental brief and any amended documents, and file a proof of service.

		Plaintiff Jorge Cortes failed to appear for his noticed deposition twice, once on November 25, 2024 and again on January 2, 2025. Antzoulatos Decl. (ROA 503) ¶¶ 3, 5, 13 & Exs. B, D, M. Plaintiffs' counsel appeared at the January 2, 2025 deposition and stated: "[C]ounsel for plaintiff has advised Mr. Cortes to appear at this deposition. Counsel has made repeated efforts to contact Mr. Cortes all of which have resulted in a no-show. . . . Let the record reflect that counsel who is present today advised Mr. Cortes to be present today" Antzoulatos Decl. (ROA 503) Ex. M. Plaintiffs do not dispute that Cortes is required to attend a deposition in this case and do not dispute that "failing to appear to two depositions is inappropriate conduct." Opp. (ROA 537) at 2:2-4. Defendants' motion to compel Cortes to appear for deposition is granted. Plaintiff Jorge Cortes is ordered to appear for deposition by <u>March 6, 2025</u>. Defendants also seek an order compelling Cortes to produce 42 categories of documents at his deposition. Defendants' motion to compel Cortes to produce documents at the deposition is denied. Defendants did not file a separate statement in support of the motion. See Cal. R. Ct. 3.1345(a)(5). Defendants' request for monetary sanctions is granted. Plaintiff Jorge Cortes shall pay sanctions in the amount of \$2,357.50 to defendants by March 6, 2025. Defendants' request for terminating sanctions is denied. Because terminating sanctions are drastic, it is generally recognized that "terminating sanctions are to be used sparingly, only when the trial court concludes that lesser sanctions would not bring about the compliance of the offending party." <i>R.S. Creative, Inc. v. Creative Cotton, Ltd.</i> (1999) 75 Cal.App.4th 486, 496. Courts contemplating imposition of a terminating sanction should generally engage in a "balancing process," <i>McGinty v. Superior Ct.</i> (1994) 26 Cal.App.4th 204, 214, taking into account the nature of the discovery abuse, whether it was part of a pattern, whether it was willful and without substantial justification, <i>Sauer v. Superior Ct.</i> (1987) 195 Cal.App.3d 213, 224-25, whether lesser sanctions would be effective to produce the discovery sought, the extent of the prejudice to other party, and whether the sanction would result in a "windfall" to the other party. <i>McGinty</i>, 26 Cal.App.4th at 214. In most cases upholding a terminating sanction, there was substantial evidence of the party's repeated and willful violations of its discovery obligations and a demonstrated intent not to comply. See, e.g., <i>R.S. Creative</i>, 75 Cal.App.4th at 496; <i>Lang v. Hochman</i> (2000) 77 Cal.App.4th 1225, 1247; <i>Mileikowsky v. Tenet Healthsystem</i> (2005) 128 Cal.App.4th 262, 279, overruled on other grounds in <i>Mileikowsky v. West Hills Hosp. & Med. Ctr.</i> (2009) 45 Cal.4th 1259. In each of these cases, the common element was the party's continuous obstructive and willful conduct in the discovery process.
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		Defendants' motion does not set forth substantial evidence of Cortes's continuous obstructive and willful conduct in the discovery process warranting the ultimate sanction. Defendants' request in their reply for issuance of an order to show cause why Cortes's claims should not be dismissed is denied without prejudice. Defendants Coach Royal-003-LP and Kingsley Management Corp. to give notice.
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 535 N Brand Blvd. Suite 285
7 Glendale, CA 91203.

8 On the date indicated below, I served the documents described as: **PLAINTIFFS' NOTICE OF**
9 **COURT'S RULING ON MOTION FOR FINAL APPROVAL OF CLASS AND PAGA**
10 **ACTION SETTLEMENT** on the interested parties in this action by sending a true copy thereof
11 to interested parties as follows and as stated on the attached service list:

12 Labor & Workforce Development Agency
13 Attn. PAGA Administrator
14 1515 Clay Street, Ste. 801
15 Oakland, CA 94612
16 PAGAFilings@dir.ca.gov

17 [✓] **BY ONLINE SUBMISSION:** I hereby certify that these documents were served from
18 Glendale, California, by online submission to Labor & Workforce Development Agency
19 portal using the link <https://dir.tfaforms.net/315>.

20 Greg S. Labate
21 glabate@sheppardmullin.com
22 Molly Brooks
23 MBrooks@sheppardmullin.com
24 Lauren J. Blaes
25 lblaes@sheppardmullin.com
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28 **Sheppard, Mullin, Richter & Hampton, LLP**
650 Town Center Drive, 10th Floor
Costa Mesa, California 92626-1993
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Facsimile: 714-513-5130

Attorneys for Defendant Roy Miller Painting, Inc.

✓] **BY E-MAIL:** I hereby certify that this document was served from Glendale, California,
by e-mail delivery on the parties listed herein at their most recent known e-mail address
or e-mail of record in this action.

[✓] **BY ELECTRONIC SERVICE:** Based on an agreement of the parties to accept electronic
service, I caused the documents to be sent to the persons at the electronic service addresses listed
above via electronic mail. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the above is
true and correct. Executed on February 20, 2025 at Glendale, California.

Lilit Tunyan
Name



Signature